

Page 1 of 4 PageID 90
U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
AUG 11 2004
COURT
TEXAS
CLERK, U.S. DISTRICT COURT
By KC
Deputy

V.

Defendants.

[illegible]

Civil Action No.: 3:04-CV-1260-M

Plaintiff Michael Skennion, appearing pro se¹, has filed this action alleging causes of action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and Age Discrimination in Employment Act, (ADEA) 29 U.S.C. § 621 *et*

Motion to Dismiss Individual Defendants and Brief in Support - Page 1

seq.. Although he has properly named the Postmaster General as a defendant, he has improperly named two individual employees of the United States Postal Service as defendants. He has named Doris Godinez-Phillips and Sandra McFeeley as individual defendants. He alleges that Ms. Godinez-Phillips is the Managing Counsel of the Postal Service's Law Department Office in Dallas, Texas, and that Ms. McFeeley is a Deputy Managing Counsel in the same office. (Complaint, paras. 2 and 3)². Plaintiff alleges that he was the victim of discrimination when he was terminated from employment with the Postal Service Law Department.

Plaintiff has improperly named Ms. Godinez-Phillips and Ms. McFeeley as Defendants in this action. The only proper defendant in an action brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-(16), is the head of the federal agency, in this case the Postmaster General. Under Title VII the proper defendant is "the head of the department, agency, or unit, as appropriate." 42 U.S.C. § 2000e-16(c). As held in *Lamb v. U.S. Postal Serv.*, 852 F.2d 845, 846 (5th Cir. 1988), "we have unequivocally adopted the rule that the only proper defendant in a Title VII action against the Postal Service is the Postmaster General." (Citations omitted.) Clearly the individual defendants must be dismissed from the action under Title VII.

Likewise, the individual defendants must be dismissed from the action brought under the ADEA. The Supreme Court has held that the ADEA is to be

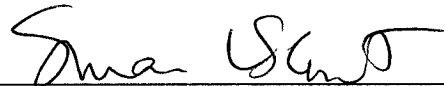
² In the answer filed simultaneously with this Motion Defendant Postmaster General admits these portions of Plaintiff's allegations, except that, the correct spelling of the first named defendant is Doris Gordinez-Phillips, and since the filing of this action Ms. McFeeley has retired from the Postal Service.

construed in accordance with Title VII. *Lehman v. Nakshian*, 453 U.S. 156, 168 n. 15 (1981) (“measures used to protect Federal employees [from age discrimination] would be substantially similar to those” in Title VII); *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979) (stating the parallel provisions of the ADEA should be construed consistently with Title VII); *see also Smith v. Office of Pers. Mgmt.*, 778 F.2d 258, 262 (5th Cir. 1985) (stating Title VII case law will be used to construe the ADEA). Once again, the Fifth Circuit Court of Appeals has removed any doubt regarding dismissal of individual federal defendants. *Honeycutt v. Long*, 861 F.2d 1346, 1349 (5th Cir. 1988) (holding that the appropriate defendant to be sued under the ADEA is the same person as under Title VII). *See also Turner v. Lee*, No. 3:98-CV-0446-G, 1999 U.S. Dist. LEXIS 3108 (N.D. Tex. Mar. 11, 1999). Thus, the appropriate defendant to be sued under the ADEA is the same person as under Title VII. Accordingly, the Plaintiff cannot proceed against individual employees of the agency as defendants.

Wherefore, Defendant Postmaster General respectfully prays that an order be entered dismissing named defendants Doris Godinez-Phillips and Sandra McFeeley from this action with prejudice.

Respectfully submitted,

RICHARD B. ROPER
UNITED STATES ATTORNEY



Susan L.S. Ernst
Assistant United States Attorney
1100 Commerce Street, 3rd Floor

Dallas, Texas 75242
Texas State Bar No. 18519600
Telephone: 214.659.8600
Facsimile: 214.767.2916

OF COUNSEL:

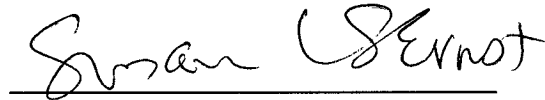
Robert Grueneberg
Attorney
USPS Law Department
222 S. Riverside Plaza, Suite 1200
Chicago, IL 60606-6105

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 2004 a true and correct
copy of the foregoing was sent by certified and First Class mail to the following:

Michael G. Skennion
1326 S.E. 17th Street, #92
Fort Lauderdale, FL 33316



Susan L.S. Ernst
Assistant United States Attorney